

19035 - C

1000000000

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of October 15, 1994

Between

BA LEASING & CAPITAL CORPORATION,

as Owner,

And

PENN MUTUAL LIFE INSURANCE COMPANY,

as Investor.

Filed with the Interstate Commerce Commission pursuant to 49
U.S.C. § 11303 on October 31, 1994, at _____ a.m., recordation
number _____.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 15, 1994 ("Assignment") between BA LEASING & CAPITAL CORPORATION, a California corporation ("Owner"), and PENN MUTUAL LIFE INSURANCE COMPANY, a Pennsylvania mutual life insurance company, as the Investor ("Investor") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

WHEREAS the Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Builder"), providing for the sale to the Owner of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Owner thereunder;

WHEREAS the Owner and ALABAMA POWER COMPANY, an Alabama corporation ("Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner to the Lessee of the Units;

WHEREAS the Builder has assigned to the Investor its rights in, to and under the CSA pursuant to an Agreement and Assignment dated as of the date hereof; and

WHEREAS in order to provide security to the Investor for the obligations of the Owner under the CSA and as an inducement to the Investor to invest in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA), the Owner agrees to assign for security purposes its rights in, to and under the Lease to the Investor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner hereby assigns, transfers and sets over unto the Investor, and grants the Investor a security interest in, as collateral security for the payment and performance of the obligations of the Owner under the CSA whether now existing or hereafter arising, all the Owner's right, title and interest, powers, privileges and other benefits in, to and under the Lease (including those inuring to the benefit of the Owner), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums now or hereafter payable to or receivable by the Owner from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, termination payment, indemnity, liquidated damages, insurance proceeds or otherwise (such moneys, other than the payments included in Excluded Payments and Rights defined below, being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the

Owner is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the payments and rights assigned by the Owner to the Investor herein do not include any of the following which are expressly reserved to the Owner: (a) all payments of any indemnity under Sections 6 and 12 of the Lease or under the Indemnity Agreement (as defined in the Participation Agreement) which by the terms thereof are payable to the Owner for its own account; (b) any insurance proceeds payable under public liability policies maintained by the Lessee pursuant to Section 7.6(1)(ii) of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Owner for its own account and any proceeds of insurance maintained with respect to the Units by the Owner and not required to be maintained by the Lessee under the Lease; (c) all rights of the Owner under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Owner on account of any such indemnities or payments referred to in clause (a) above and to seek legal or equitable remedies to require the Lessee to maintain the insurance coverage referred to in clause (b) above, provided that the rights referred to in this clause (c) shall not be deemed to include the exercise of any remedies provided for in Section 13 of the Lease other than the right to proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of such indemnities or insurance covenants or to recover damages for the breach thereof; (d) if any Event of Default under the Lease based solely on a breach of any covenant of the Lessee to pay any indemnity referred to in clause (a) above or to maintain any insurance referred to in clause (b) above shall occur and be continuing, the right of the Owner to exercise the remedies, but only those remedies provided for in Section 13 of the Lease, to enforce, by appropriate court action, either at law or in equity, performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Owner or to maintain such insurance or recover damages for the breach of any such covenant; (e) the right of the Owner, but not to the exclusion of the Investor, as provided in the Lease (i) to receive from the Lessee certificates and other documents and information which the Lessee is required to give or furnish to the Owner pursuant to the Lease, (ii) to inspect the Units and all records relating thereto, (iii) to exercise its rights to perform for the Lessee under Section 20 of the Lease and (iv) to cause the Lessee to take such acts as may be reasonably requested by the Owner pursuant to Section 18 of the Lease; (f) so long as no event of default under the CSA has occurred and is continuing, the right, to the exclusion of the Investor, (i) to accept delivery of the Units under and pursuant to the Participation Agreement and the CSA, subject to the satisfaction of the conditions set forth in the Participation Agreement and the CSA, and (ii) to exercise the rights of the Owner under Section 16 of the Lease with respect to the Lessee's renewal options and purchase options (but not the right to receive the proceeds payable in connection with such purchase options); and (g) whether or not an event of default under the CSA has been declared

and is continuing, all rights of the Owner, to the exclusion of the Investor, (i) to adjust the basic lease rates and Casualty and Termination Values as provided in Section 3.1(2) of the Lease subject to the provisions of Section 3.1(4) of the Lease and Section 23.2 of the CSA and (ii) to determine Fair Market Sale Value and Fair Market Rental Value under the Lease, for all purposes except following an Event of Default under the Lease (such payments and rights reserved to the Owner being herein called "Excluded Payments and Rights"). In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Investor in its own name, or in the name of its nominee, or in the name of the Owner or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled to under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Lessee shall make all Payments required to satisfy the obligations of the Owner under the CSA directly to the Investor and shall pay any balance of all Payments directly to the Owner, in each case by wire transfer of immediately available funds to the respective bank accounts or addresses set forth on Schedule I hereto; provided, however, all Payments made by the Lessee more than five business days (as defined in the Lease) after receipt by the Lessee and the Owner of notice in writing from the Investor that an event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder ("Default"), has occurred and is continuing (which notice shall provide reasonable detail concerning the event of default or Default) shall be made by the Lessee to the Investor; provided, further, that if such notice shall relate only to a Default or Defaults and no such Default shall become an event of default under the CSA within 150 days after such notice, or upon the earlier cure of such Default or Defaults, the Lessee shall thereafter again make Payments in accordance with the foregoing provisions of this sentence and any balance of Payments held by the Investor which are owed to the Owner shall be distributed by the Investor to the Owner (the Lessee by its consent hereto hereby agreeing to pay the Owner interest accrued at the rate of 8.53% per annum on the amount of any such balance from and after 30 days following payment thereof to the Investor until distribution thereof to the Owner). The Investor agrees to apply all Payments it receives, together with any payment made pursuant to Section 12(b) of the Participation Agreement, to satisfy the obligations of the Owner under the CSA. If an event of default under Section 16.1 of the CSA shall have occurred and be continuing, the Investor, after application of such Payments to satisfy the obligations of the Owner under the CSA, may hold the balance remaining of such Payments until the earlier to occur of (i) the date on which such event of default shall have been cured to the extent permitted under the provisions of the CSA, or (ii) the 180th day following the date on which such funds were received by the Investor, in which event, unless a Declaration of Default (as defined in Section

16.1 of the CSA) has been made, such balance in excess of the amount necessary to satisfy the obligations of the Owner under the CSA shall be distributed to the Owner. If the Investor shall not receive any rental payment under Section 3 of the Lease or Casualty Value payment under Section 7.1 of the Lease when due, the Investor shall use its best efforts to notify the Lessee and the Owner by telephone, confirmed in writing, at their addresses set forth in the Lease within one business day after the due date thereof; provided, however, that the failure of the Investor so to notify the Owner shall not impose any liability on the Investor and shall not affect the obligations of the Owner hereunder or under the CSA, except that the Investor may not make a Declaration of Default (as defined in Section 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said Section 16.1 arising solely by reason of the failure of the Lessee to make any such rental or Casualty Value payment which would not constitute an event of default under subparagraph (e) of said Section 16.1 if the Owner complies with the provisions thereof, unless such event of default is not remedied within ten business days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify the liability of the Owner under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner or persons other than the Investor.

3. The Owner will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner; without the written consent of the Investor, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner does hereby constitute the Investor the Owner's true and lawful attorney, irrevocably, with full power (in the name of the Owner, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith

and to file any claim or take any action or institute any proceedings which to the Investor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums and other obligations due from the Owner under the CSA, this Assignment and all rights herein assigned to the Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Owner. Promptly following such full discharge and satisfaction, the Investor agrees that, upon the request of the Owner or the Lessee, it will advise the Lessee in writing that all sums and other obligations due from the Owner under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Investor.

6. The Owner will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Investor in order to confirm or further assure the interest of the Investor hereunder.

7. Subject to the provisions of the Participation Agreement and the CSA, the Investor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

8. This Assignment shall be governed by the laws of the State of Alabama, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing, recording or deposit hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement shall be filed, recorded or deposited or in which any Unit shall be located, and such rights, if any, arising out of the marking of the Units.

9. The Owner shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Investor unless the same are delivered directly to the Investor pursuant to the provisions of any other document.

10. The Investor hereby agrees with the Owner that the Investor will not, so long as no Event of Default under the Lease or event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner to the

Investor by paragraph 1 of this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and upon the occurrence of an Event of Default under the Lease or an event of default under the CSA, the Investor shall be entitled to exercise remedies in respect of such assigned rights, powers, privileges, authorizations and benefits pursuant to applicable law and pursuant to and subject to the provisions and limitations set forth in the Lease, the CSA (including Section 17.9 thereof) and this Assignment; provided, however, that the Investor may not amend any provision of the Documents without the consent of the Owner unless an Event of Default under the Lease or an event of default under the CSA has occurred and is continuing and the Investor has given at least 10 days' prior written notice to the Owner of such amendment (it being understood that a waiver of any existing default shall not be construed as such an amendment), and, if such amendment involves any changes in any of the dates of payment of or any of the amounts of rentals or Casualty or Termination Values under the Lease and any such change is materially adverse to the interests of the Owner, the Owner shall have the option within 90 days thereafter to pay or cause to be paid the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under the CSA, and upon receipt of such payment the Investor shall have no further interest in any of the Documents or the Units. In addition, if an event of default under Section 16.1 of the CSA shall have occurred and be continuing as the result of the failure by the Lessee to pay any Basic Rents under the Lease, and if the Investor shall not have made a Declaration of Default or otherwise proceeded to exercise one or more of the remedies set forth in the CSA or the Lease within 180 days following the date on which such event of default shall have occurred, the Owner shall have the option within 90 days thereafter (or, if the Investor shall give written notice to the Owner at any time during such 90-day period of the Investor's determination to make a Declaration of Default or otherwise proceed to exercise one or more of the remedies set forth in the CSA or the Lease, within 15 days after the Owner's receipt of such notice), and upon at least five days' prior written notice to the Investor, to pay or cause to be paid the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under the CSA, and upon receipt of such payment the Investor shall have no further interest in any of the Documents or the Units. Subject to the terms of the Lease and the CSA, the Owner may, so long as no Event of Default under the Lease or event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of Section 13.1(a) of the Lease; provided, however, that the Owner may, whether or not an Event of Default under the Lease or an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of Section 13.1(a) of the Lease in respect of the Excluded Payments and Rights; provided further, however, that

the Owner shall not, without the prior written consent of the Investor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of Section 13.1 (other than Section 13.1(a)) of the Lease or take any action which would cause any termination of the Lease. The provisions hereof are subject to Section 4.7 of the CSA.

11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Investor shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

12. The obligations of the parties under this Assignment and the liability of each of the parties for any breach of a representation, warranty or agreement contained in this Assignment are fully recourse to such party notwithstanding anything contained in any other Document to the contrary, it being understood, however, that the Owner's obligations under this Assignment are not intended in any way to increase, alter or otherwise modify the extent of the Owner's obligations to the Investor under the CSA as set forth in Section 4.8 of the CSA.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, as of the date first above written.

BA LEASING & CAPITAL
CORPORATION

By: *Walter H. Lunt*

Title: Vice President

PENN MUTUAL LIFE INSURANCE
COMPANY

By: _____

Title: Assistant Vice
President

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, as of the date first above written.


BA LEASING & CAPITAL
CORPORATION

By: _____

Title: Vice President

PENN MUTUAL LIFE INSURANCE
COMPANY

By: _____


LERoy O. McCLELLAN
Title: Assistant Vice
President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF SAN FRANCISCO)

On October 22, 1994 before me, Susan A. Scaletti

DATE

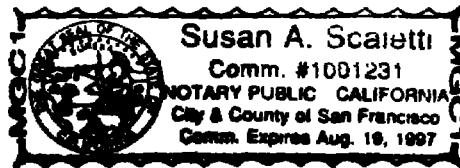
NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Philip M. Litchenstein

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Susan A. Scaletti (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT _____

DATE OF DOCUMENT _____

NUMBER OF PAGES _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this _____ day of October, 1994, before me personally appeared Philip M. Litchenstein to me personally known, who, being by me duly sworn, says that he is a Vice President of BA LEASING & CAPITAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF PENNSYLVANIA)
) ss.:
COUNTY OF MONTGOMERY)

On this _____ day of October, 1994, before me personally appeared LeRoy O. McClelland, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of PENN MUTUAL LIFE INSURANCE COMPANY and that said instrument was signed and sealed on behalf of said company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this _____ day of October, 1994, before me personally appeared Philip M. Litchenstein to me personally known, who, being by me duly sworn, says that he is a Vice President of BA LEASING & CAPITAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Notarial Seal]

My Commission Expires

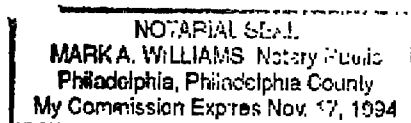
STATE OF PENNSYLVANIA)
) ss.:
COUNTY OF MONTGOMERY)

On this 25th day of October, 1994, before me personally appeared LeRoy O. McClellan, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of PENN MUTUAL LIFE INSURANCE COMPANY and that said instrument was signed and sealed on behalf of said company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.


Notary Public

[Notarial Seal]

My Commission expires



Consent and Agreement

The undersigned, the lessee ("Lessee") named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all Payments (as defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease or otherwise in respect of the railroad equipment leased thereunder as provided in Section 1 of the Lease Assignment;

(2) Penn Mutual Life Insurance Company ("Investor"), the assignee named in the Lease Assignment, shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Investor were named therein as the Lessor;

(3) the Investor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Investor, be terminated or modified (except in accordance with its terms), nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration, impairment or waiver of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Investor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Alabama and, for all purposes, shall be construed in accordance with the laws of said state.

ALABAMA POWER COMPANY

By: _____



Title: Vice President,
Secretary and
Treasurer

The foregoing Consent and Agreement is hereby accepted,
as of October 15, 1994.

PENN MUTUAL LIFE INSURANCE
COMPANY

By: _____

Title: Assistant Vice
President

SCHEDULE I

Investor: Bankers Trust Company
ABA #02100-1033
16 Wall Street
New York, New York 10005
Attn: Insurance Unit, Private Placements 01419540
For Credit to the account of
The Penn Mutual Life Insurance Company
A/C # 092497
(with proper identification of the payor and
breakdown of principal and interest)

Owner: Bank of America (BALCAP)
ABA#: 121000358
Account: 06568-57503
Account of: BALCAP
Reference: Alabama Power Company

or by such other reasonable means or to such other address as shall be specified by the Investor or the Owner, as the case may be, upon not less than five business days' (as defined in the Lease) prior written notice to the Lessee.